From: Don Carrington
To: Microsoft ATR
Date: 1/28/02 4:13pm
Subject: Microsoft

Date: January 28, 2002
To: The United States Department of Justice
From: Don Carrington
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RE: Microsoft Settlement

The Microsoft trial was a waste of taxpayers' money and a significant disincentive to investors. While both Microsoft and the plaintiffs may be happy with the settlement, the truth is that the plaintiffs should never have filed this action to begin with.

We have seen government sponsored lawsuits against the tobacco industry, against Microsoft, and now fully expect to see lawsuits against the fast food industry. While private parties should always have the freedom to use our courts, the rise in government sponsored lawsuits is a danger to our great country.

This case should be ended as soon as possible, so I am in support of this settlement only to expedite the process.

I have attached the following opinion piece from one of my associates. Please consider it a part of my official comment.

Cooper Gets It Right on Microsoft
By Dom Armentano and ROY CORDATO

3I have concluded that this settlement with Microsoft is in the best interest of North Carolina consumers.[2] With this statement Atty. Gen. Roy Cooper announced that North Carolina, along with eight other states, has joined the U.S. Department of Justice in reaching a settlement in its antitrust lawsuit against Microsoft. Cooper should be commended for deciding to scrap this ill-conceived and ultimately anticonsumer lawsuit brought by his predecessor, now Gov. Mike Easley.

The Microsoft antitrust case, as brought by both the Reno and Easley Justice Departments, was a mistake from the start. The fatal flaw was that the Reno-Easley argument against Microsoft was essentially a legal brief for Microsoft1s disgruntled competitors who simply could not compete. Antitrust laws prohibit restraints of trade and higher prices, yet Microsoft was prosecuted for the opposite behavior?for rapid innovation, increasing production, and lowering prices. Indeed, Microsoft was being prosecuted not because of its monopolist behavior but because it was being too competitive.

Like most antitrust suits since passage of the Sherman Act in 1890, the Microsoft case was not about protecting competition but protecting competitors.

Postsettlement complaints by some of Microsoft1s competition bear this out. In urging the states to continue their war on Microsoft, Real Network1s Kelly Jo MacArthur said the settlement was a 3reward, not a remedy.² Scott McNealy, CEO of Sun Microsystems, quipped that 3I can1t retire now?I can1t leave the world to anarchy.² From McNealy1s perspective the world of falling software prices and innovative new products stimulated by Microsoft1s presence in the market is anarchy. Apparently 3order² is the pre-Microsoft world where consumers paid up to $1,000 for word processing and spreadsheet programs and internet users had to fork over about $100 to use Netscape. True competition always looks anarchic to those who can1t compete.

Microsoft should be praised for refusing to cave in to ludicrous demands from self-styled 3trustbusters² like Janet Reno and Mike Easley that it unbundle its web browser from its Windows operating system (appeasing Netscape) or that the company be split into three separate pieces. Instead, it courageously fought the government for years to arrive at what amounts to a legal draw and a victory for consumers.

Ultimately the government got almost nothing, and consumers are better off for it. Under the consent decree, Microsoft is prohibited from engaging in exclusive dealing arrangements with original equipment manufacturers (OEMs), access providers, and suppliers, a practice it had all but abandoned anyway. Further, Microsoft is required to share its applications program interface code and allow all OEMs that license its Windows operating system more freedom to display non-Microsoft software applications. Again, Microsoft was already moving in the direction of what they call 3shared sources.² Finally, Microsoft must charge OEMs published rates and offer them uniform discounts. But Microsoft is left entirely free to determine its own prices and discounts and change them at any time. This is crucial because it is Microsoft1s aggressive pricing strategies that have made the consumer software market as competitive as it is.

Finally, Microsoft is a clear winner on the issue that first sparked the lawsuit: the tying of its Web browser to its operating system. Not only is that bit of efficient bundling now perfectly legal but more importantly, there are no specific restrictions on any future bundling of applications with operating systems going forward. This is the most important innovational development to come out of the settlement and it1s strongly pro-Microsoft and proconsumer.
It was never in the interest of North Carolina consumers to be part of this witch-hunt. Nearly all antitrust suits are brought or instigated by competitors and are blatantly anticonsumer. Antitrust has a long history of prosecuting aggressively competitive companies that have innovated rapidly and lowered prices to consumers; this includes such famous cases as Standard Oil and IBM. Consumers and businessmen need free, open markets and they need

protection from force and fraud, but they don1t need antitrust laws that hamper innovation and harm society. Three cheers for Cooper in his decision to settle the state1s suit against Microsoft, and solid brickbats to Easley for bringing it in the first place.

Dom Armentano is professor emeritus in economics at the University of Hartford and author of "Antitrust and Monopoly (Independent Institute, 1998) and Antitrust: The Case for Repeal (Mises Institute, 1999)". Roy Cordato is vice president for research and resident scholar at the John Locke Foundation in Raleigh.